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STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:
PACIFIC INSURANCE AGENCY and
MAX DRISKILL GELWIX,

No. 7841

Respondents.

CONSENT ORDER

A Notice of Hearing was issued by the Arizona Department of Insurance ("Department") on September 14, 1992, wherein the Department alleged the Respondents violated the Arizona Revised Statutes, Title 20. The Respondents received copies of the Notice and have been advised of their right to a hearing in this matter and hereby waive such right.

For the purpose of resolving this matter, Respondents hereby admit that the following Findings of Fact are true and consent to the entry of the following Conclusions of Law and Order.

FINDINGS OF FACT

- 1. Pacific Insurance Agency is presently and was at all material times a California corporation licensed as a non-resident property and casualty insurance agency in the State of Arizona (license number 0716033).
- 2. Max Driskill Gelwix is presently and was at all material times licensed as a non-resident full-line property

and casualty insurance agent in the State of Arizona. Mr. Gelwix' license, number 0715409, shall expire on June 30, 1994. Gelwix was at all material times the executive vice president of Pacific Insurance and the individual licensed to represent the agency.

COUNT ONE

- 3. PIA Arizona, Inc. d/b/a Pacific Insurance Agency ("PIA Arizona") was an Arizona domiciled agency and maintained a property and casualty license from April 21, 1986 until August 31, 1990 and a disability and life insurance license from April 21, 1986 until August 31, 1991 (license number 196609).
- 4. At all material times in 1990, Pacific Insurance Agency maintained a corporate address of 3635 Ruffin Road, San Diego, California 92123. Pacific Insurance Agency's officers were Glen Dethloff (president) and Max Gelwix (vice president, secretary and treasurer).
- 5. At all material times in 1990, PIA Arizona's corporate address was the same as the address of Pacific Insurance Agency, 3635 Ruffin Road, San Diego, California 92123. PIA Arizona's only shareholders were Dethloff and Gelwix. The officers of the corporation were George Frieh (president), Dethloff (vice president) and Gelwix (secretary-treasurer). These three men were also the directors of the corporation. Frieh and Gelwix signed PIA Arizona's Annual Report and Certificate of Disclosure to the Arizona Corporation Commission for the year ending 6/30/90 on August

- 6. At all material times in 1990, Gelwix and Dethloff were the only shareholders of PIA Arizona and were officers and directors of both Pacific Insurance Agency and PIA Arizona. In the documents filed with the Corporation Commission, PIA Arizona was referred to as the "Phoenix branch of Pacific Insurance Agency".
- 7. On or about June 25, 1990, an invoice from Pacific Insurance Agency for a final audit premium in the amount of \$5,416.00 was sent to American Grading, Inc. ("American Grading"). American Grading was an insured of Royal Insurance Company of America ("Royal Insurance"). The invoice identified the billing agent as Pacific Insurance Agency, P.O. Box 7807, Phoenix, Arizona 85011. The invoice also indicated that the agency had been established in 1928 with its corporate headquarters in San Diego, California, and regional branches in Irvine, California; North County, California and Phoenix, Arizona.
- 8. On or about July 17, 1990, American Grading issued its Citibank check, number 002984, in the amount of \$5,416.00 payable to "Pacific Insurance Agency, P.O. Box 7807, Phoenix, Arizona 85011," in payment of the audit premium.
- 9. On or about August 17, 1990, Pacific Insurance Agency deposited American Grading's check number 002984 into Torrey Pines Bank, La Jolla, California, checking account

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number 0721-013852. The account was entitled "Pacific Insurance Agency, Phoenix Trust Account, P.O. Box 20160-X, San Diego, California 92120." Pacific Insurance Agency never forwarded American Grading's premium payment to Royal Insurance.

COUNT TWO

10. On or about November 29, 1990, Gelwix sent a letter to the Department advising that PIA Arizona ceased doing business on 6/30/90 because Frieh and Company assumed control of its "book of business". Gelwix enclosed a copy of a Memorandum of Agreement, dated 7/2/90, purported to be the agreement whereby PIA Arizona transferred all its assets to Frieh and Company.

11. The 7/2/90 Memorandum of Agreement was orally rescinded by Frieh on or about September 1990. The Memorandum of Agreement was replaced by an agreement executed on June 19, 1991, by Gelwix on behalf of PIA Arizona. The June 1991 Agreement was affirmed by Gelwix in a June 25, 1991, letter to George Frieh. Gelwix signed this letter as the executive vice president of Pacific Insurance Agency, P.O. Box 609006, San Diego, California 92160.

COUNT THREE

12. On February 10, 1992, Royal Insurance contacted the Department requesting assistance in obtaining reimbursement of the \$5,416.00 from Pacific Insurance Agency. In its letter to the Department, Royal Insurance indicated that Pacific Insurance Agency refused to remit any money alleging that, at

one time, Pacific Insurance Agency contemplated purchasing certain assets of PIA Arizona. The February 10, 1992, letter indicated that the negotiations between the two entities fell through and the money was never forwarded to Royal Insurance.

- 13. The Department commenced its investigation with inquiries to Pacific Insurance Agency. In response to the inquiries, Gelwix, on behalf of Pacific Insurance Agency, sent two letters to the Department on February 28, 1992 and May 8, 1992.
- 14. In his February 28, 1992, letter, Gelwix attached the 7/2/90 Memorandum of Agreement and represented to the Department that the agreement evidenced a change in ownership of PIA Arizona.

COUNT FOUR

- 15. Gelwix' May 8, 1992, letter indicates that he reviewed the transaction involving American Grading's premium payment to Pacific Insurance Agency. In this letter, he stated that "no money was collected from the insured by Pacific Insurance Agency." Gelwix signed his letter as the executive vice president of Pacific Insurance Agency, P.O. Box 609006, San Diego, California 92160.
- 16. On January 27, 1993, Respondents Max Gelwix and Pacific Insurance Agency submitted a check to the Department paid to the order of Royal Insurance the \$5,415.00 which is the subject of this matter.

CONCLUSIONS OF LAW

1. The Department of Insurance has jurisdiction over this matter.

COUNT ONE

- 2. Pacific Insurance Agency's deposit of American Grading's premium payment of \$5,416.00 into its trust account and failure to forward the money to Royal Insurance constitutes a violation of A.R.S. § 20-316(A)(4).
- 3. The conduct of Respondents, Gelwix and Pacific Insurance Agency, in retaining American Grading's premium payment constitutes conduct of affairs under their licenses showing Respondents to be a source of injury to American Grading and Royal Insurance in violation of A.R.S. § 20-316(A)(7).
- 4. Respondents' conduct in obtaining and retaining American Grading's premium payment constitutes a violation of or non-compliance with A.R.S. § § 20-316(A)(4) and 20-316(A)(7).

COUNT TWO

- 5. Gelwix' November 29, 1990, letter to the Department enclosing the rescinded 7/2/90 Memorandum of Agreement was in violation of A.R.S. § 20-316(A)(7).
- 6. Gelwix' November 29, 1990, letter was a violation of or non-compliance with Title 20 within the meaning of A.R.S. § 20-316(A)(2).
- 7. The license of Pacific Insurance Agency may be suspended, revoked or refused for any of such causes as relate

to Gelwix, the individual designated in the license to exercise Pacific Insurance Agency's powers pursuant to A.R.S. § 20-316(B).

COUNT THREE

- 8. Gelwix' February 28, 1992, letter in which he attached the 7/2/90 Memorandum of Agreement constitutes a violation of A.R.S. § 20-316(A)(7).
- 9. Gelwix' characterization of the 6/30/90 Memorandum of Agreement constitutes a violation of A.R.S. § 20-316(A)(7).
- 10. The license of Pacific Insurance Agency may be suspended, revoked or refused for any of such causes relating to the conduct of Gelwix described in paragraphs 8 and 9 above pursuant to A.R.S. § 20-316(B).

COUNT FOUR

- 11. Gelwix' May 8, 1992, letter stating "no money was collected from the insured by Pacific Insurance Agency" is directly contrary to the fact that Pacific Insurance Agency deposited American Grading's premium payment into its account in California. Gelwix 's May 8, 1992, letter constitutes a violation of or non-compliance with Title 20 within the meaning of A.R.S. § 20-316(A)(2).
- 12. The license of Pacific Insurance Agency may be suspended, revoked or refused for any such causes as they relate to the actions of Gelwix as described above in paragraph 11 pursuant to A.R.S. § 20-316(B).

- 13. The conduct described in the Findings of Fact constitutes cause for which original issuance or renewal of Respondents' licenses could have been refused pursuant to A.R.S. § 20-290(B)(2). Therefore, grounds exist to suspend, revoke or refuse to renew Respondents' licenses pursuant to A.R.S. § 20-316(A)(1).
- 14. Grounds exist to suspend, revoke or refuse to renew Respondents' insurance licenses, impose civil penalties upon Respondents and order Respondents to provide restitution to any party injured by Respondents' actions pursuant to A.R.S. §§ 20-316(A), (B) and (C).

ORDER

NOW, THEREFORE, IT IS ORDERED:

- 1. The Respondents shall pay restitution to Royal Insurance in the amount of \$5,416.00.
- 2. The insurance license held by Respondent Pacific Insurance Agency is immediately revoked.
- 3. Respondent Max Gelwix shall immediately cease and desist from all activities relating to the sale of insurance in Arizona and shall not renew his license upon expiration on June 30, 1994. Respondent shall not apply for a license pursuant to A.R.S. § 20-291 for five (5) years following the expiration of his license on June 30,1993.

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4. Respondents shall pay a civil penalty in the sum of \$7,500.00 in cash or cashier's check to the Department upon the entry of this order.

DATED this 13th day of December , 1993

SUSAN GALLINGER, Director Arizona Department of

CONSENT TO ORDER

- 1. The undersigned acknowledges that he has read the foregoing Findings of Fact, Conclusions of Law and Order and is aware of his right to an administrative hearing in this matter and has waived same.
- 2. The undersigned admits the jurisdiction of the Department and admits the foregoing Findings of Fact and consents to the entry of the foregoing Conclusions of Law and Order.
- 3. The undersigned states that no promise was made to him to induce him to enter into this Consent Order and declares that he has entered into this Consent Order voluntarily.
- 4. The undersigned acknowledges that acceptance of this Consent Order is for the purpose of settling this litigation as against him and does not preclude the Department of Insurance except with respect to this action, or any other agency or officer of this State, or subdivision thereof, from instituting other proceedings as may be appropriate now or in the future.

The undersigned waives all rights to challenge 1 5. such Findings of Fact, Conclusions of Law and Order on appeal 2 or otherwise, and agrees to be bound by the foregoing Order. 3 4 5 6 MAX DRISKILL GELWIX, Respondent 7 PACIFIC LASURANCE AGENCY 8 9 By: Executive Vice President 10 11 COPY of the foregoing mailed this 13th day 12 of ____December 1993, to: 13 Felecia A. Rotellini 14 Assistant Attorney General Consumer Protection & Antitrust 15 Section 1275 West Washington 16 Phoenix, Arizona 85007 17 Katrina Rogers, Acting Deputy Director Jay Rubin, Assistant Director 18 Maureen Catalioto, Supervisor, Licensing Department of Insurance 19 2910 North 44th Street, Suite 310 Phoenix, Arizona 85018 20 Jeffrey A. McKee, Esq. 21 Morrison & Hecker 2800 North Central Avenue 22 Suite 1600 Phoenix, Arizona 85004-1047 23 24

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